

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6093 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ STATE ROAD TRANSPORT CORPN

Versus

SURESHCHANDRA SOMESHWAR JOSHI

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Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is appearing for the petitioner corporation. Notice of rule has been served upon the respondent but nobody has remained present for the respondent workman.

The facts of the present petition, in short, are that the respondent was working as a conductor in the petitioner corporation. It was found that he had misappropriated sum of Rs. 375.00 in as much as he did not credited the amount of sale of ticket block no. 320200 and that he had also temporarily misappropriated Rs.60.00 on 28.8.82 which was subsequently credited on

7th December, 1982 and regular departmental inquiry was held against him and the inquiry officer found him guilty. After giving show cause notice, he was dismissed from service by order dated 1st December, 1983. Said dismissal was challenged by the respondent before the labour court, Nadiad by filing reference No.803 of 1983. The labour court has passed award on 27.9.1989 whereunder the labour court has set aside the order of dismissal and directed the reinstatement of the workman without backwages and with continuity of service.

Before the labour court, the respondent workman has not challenged the legality, validity and propriety of the departmental inquiry. The labour court has examined the merits of the matter and has considered the misconduct found to have been proved against the respondent. The labour court came to the conclusion that the punishment which has been imposed upon the respondent is harsh and unjustified considering the length of ten years' service of the respondent and also considered the fact that denial of back wages is also amounting to punishment and therefore, one opportunity was given to the respondent workman by the labour court. The labour court has exercised the powers under section 11A of the ID Act and has passed the impugned award which has been challenged by the petitioner corporation before this court by filing this petition under Article 227 of the Constitution of India.

Learned advocate Mr.Raval appearing for the petitioner corporation has submitted that it is a serious misconduct of dishonesty and misappropriation committed by the respondent and in past also, some such serious misconducts were committed by the respondent workman. In spite of that, the labour court has passed the impugned order without taking it into consideration and the denial of back wages cannot be said to be sufficient punishment in light of the misconduct committed by the respondent workman.

I have carefully considered the submissions made by Mr. Raval, the learned advocate for the petitioner corporation. The fact remained that the serious charges of misappropriation were levelled against the respondent which were found to have been proved during the course of departmental inquiry and even before the labour court also, legality and validity thereof were not challenged by the respondent workman. The past record of the respondent is not good. However, the labour court has not considered the past record while passing the impugned judgment and award. On the facts and in the

circumstances of the case, as per my view, mere denial of back wages cannot be considered to be the sufficient punishment in light of the misconduct established against the respondent workman. Here, it should be noted that while admitting this petition, no interim relief was granted against the respondent workman and, therefore, the respondent workman must have been reinstated in service. Therefore, after passage of about nine years, now, it is not just and proper and in the fitness of the things to disturb the award of the labour court as also the present position of the respondent in so far as the reinstatement part is concerned. However, as per my view, mere denial of back wages is not sufficient punishment in light of the facts and circumstances of the present case and some more punishment is required to be imposed upon the respondent in light of the misconduct established against him. Therefore, after considering the entire records and facts of the present case, I am of the opinion that five annual increments of the respondent workman should be stopped with permanent effect with effect from 1st January, 1999 by way of punishment and that would serve the ends of justice. Accordingly, I pass the following order.

The impugned judgment and award of the labour court is modified and the petitioner corporation is directed to stop five annual increments of the respondent workman with permanent effect from 1st January, 1999. The effect of these directions would be that on and from 1st January, 1999, his five increments shall be stopped by the petitioner corporation with future effect and the same would not result into reduction of his present pay packet and as a consequence of such stoppage of increments as stated above, there shall be no recovery from the respondent workman but his five annual increments shall be stopped with future effect from 1st January, 1999. Rest of the award passed by the labour court, Nadiad in Reference No. 803 of 1983 dated 27.9.1989 is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

29.10.1999. (H.K.Rathod,J.)

Vyas